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NO. 80-1633

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1980

McARTHUR DAVIS,

Petitioner,

vs.

FLORIDA EAST COAST RAILWAY COMPANY,

Respondent

Petition for Writ of Certiorari to the District Court of Appeal First District, State of Florida

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QUESTION PRESENTED FOR REVIEW

Petitioner was engaged in switching operations making up a train. In connection therewith a coupling was to be made between two cars. On one of the cars the coupler was so far out of line that it would not couple automatically with the other car upon impact. Because of this it was necessary for him to manually align the drawbar to a more central position so the coupling could be made and, while doing this, he suffered the injuries for which recovery was sought.

The Question is:

1. Whether the employee was entitled to jury instructions that the operation of a car on which the drawbar is so far out of line as to prevent automatic coupling violates the Safety Appliance Act and imposes absolute liability for the employee's injury.

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NO.

IN THE SUPREME COURT OF THE UNITED STATES October Term, 1980

McARTHUR DAVIS,

Petitioner,

vs.

FLORIDA EAST COAST RAILWAY COMPANY,

Respondent

Petition for Writ of Certiorari to the District Court of Appeal First District, State of Florida

---

Petitioner prays that a Writ of Certiorari issue to review the judgment and opinion of the District Court of Appeal, First District of the State of Florida, entered December 20, 1980, affirming a judgment for the employer rendered by the Circuit Court of Duval County, Florida, in an action by petitioner under the Federal Safety Appliance Act.

OPINION BELOW

The per curiam opinion of the District Court of Appeal is reported at 292 So.2d 69 by caption and disposition and appears in Appendix A-1.

JURISDICTION

The judgment of the District Court of Appeal, the highest court of Florida in which a decision could be had, Article V, §§ 3 and 4, Florida Constitution was entered December 30, 1980. Jurisdiction of this Court is invoked pursuant to 28 USC 1257 (3).

STATUTES INVOLVED

49 USC §2 and §7 Federal Safety Appliance Act.

§2. Automatic couplers

It shall be unlawful for any common carier engaged in interstate commerce by railroad to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.
Mar. 2, 1893, c. 196, §2, 27 Stat. 531.

§7. Assumption of risk by employees.

Any employee of any common carrier engaged in interstate commerce by railroad who may be injured by any locomotive, car, or train in use contrary to the provisions of sections 1 to 7 of this

title shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.
Mar. 2, 1893, c. 196, §8, 27 Stat. 532.

STATEMENT OF THE CASE

Petitioner was the switchman in a yard train crew consisting of an engineer, a conductor and himself. A number of boxcars from other points in Bowden Yard had been placed end to end on #14 track where they were to be coupled together into a train. Petitioner would walk down the line of cars and when he came to breaks between the cars, if the couplers were in alignment, would signal the engineer to shove the cars forward and effect the automatic coupling by impact.

However, couplers are on the ends of drawbars and have side play which gives flexibility to the train enabling it to traverse curves without derailing. To make side play possible the drawbar rests on a metal plate on which it can slide from side to side. When cars are uncoupled on a curve a drawbar may remain in a side position. Drawbar can also be knocked out of alignment when cars with closed knuckles are shoved together during a switching operations, knocking one or both couplers to a side position where they may stay. In some cases a drawbar may be so far off center as to preclude automatic coupling with another car. In such cases it is necessary for the switchman to "adjust", that is to say, manually move the drawbar to a center position before a coupling can be made. Ordinarily, the alignment of a coupler by the switchman poses no real problem as he either pushes it or

pulls it across the slide plate to the proper position and then signals the engineer to bring the cars together. Sometimes, however, a coupler will be hard to move and must be lifted up from and across the slide plate.

On this occasion petitioner, walking southerly, came upon a car with the drawbar so far out of alignment to the west that it was incapable of coupling with any other car. He tried to push it. It wouldn't move. He then tried to pull it. It still wouldn't move. He secured his footing and when he reached under and attempted to lift it over felt excruciating pain in his back and had to let go. Petitioner estimated the weight of the coupler at 150 to 300 lbs. (R-II-8-82)

T. A. Ryals, (R-II-92) a yard switchman with 28 years experience with the Atlantic Coast Line Railroad, testified that drawbars and couplers weigh between 300 and 350 lbs. Misaligned drawbars occur on every job and ordinarily are no problem as "you either pull or just push it, whichever direction you want it to go." Sometimes they are hard to move and it is necessary for the switchman to "get his hands, or sometimes his arms, underneath it and lift it and shove it at the same time." (R-II-82-94).

The cars were, therefore, equipped with "automatic couplers" in the sense they coupled automatically when in alignment. Some railroad couplers are designed with springs which realign them to a central position when released from other cars, but petitioner made no contention that the railroad was under a present obligation to use any specific type of coupler.

THE FEDERAL QUESTIONS

The federal questions arose at trial in the Circuit Court of Duval County, Florida, when petitioner requested and the Court refused to give the following jury instructions. (R. Petitioner's requested jury instructions.)

Requested instruction No. 1 said:

> Plaintiff, McArthur Davis, alleges in this action that while he was engaged in the performance of his duties as a switchman for the defendant making up a train being used in interstate commerce a coupler on one of the cars was so far out of line that it could not couple automatically by impact with another car, and that it was necessary to manually adjust the alignment of the coupler to a more central position so that a coupling could be made, and while doing this, he suffered the injuries for which recovery is sought.

Requested instruction No. 3 said:

> I charge you that the Safety Appliance Act imposes an an absolute duty upon common carriers engaged in interstate commerce by rail to equip and maintain on all cars used by it, couplers that will couple automatically by impact. Any violation of this duty resulting in injury to an employee gives rise to a liability for damages and the railroad company is not excused by any showing of diligence and due care on its part, however great. It is not only the duty of the railroad to provide such couplers, but to keep

them in such operative condition that they will perform their functions at all times.

Requested instruction No. 5 said:

If you should find that the coupler was so far out of line that it would not couple automatically by impact and if it was necessary for plaintiff to manually adjust the drawbar or coupling mechanism in order to make the couplers couple automatically by impact, then there would be a violation of the Safety Appliance Act by the defendant in not having the type of coupler required by the Act.

"The Court dictated its ruling in the record (R. IV, 403-404) as follows:

THE COURT: You are saying that the couplers fall out of line, and they needed adjustment?

Now, if 5 doesn't cove every possible suggestion in that:

'If you should find that the coupler was so far out of line that it would not couple automatically by impact' --the expert says, no, it won't, and your man says it was all the way over, out of line, by impact, and it was necessary for him to manually adjust the drawbar in order to make it couple automatically by impact, then there's a violation.

MR. STEWART: Yes sir.

THE COURT: Clear, absolute violation, without anything further. There ain't no use to.

> Then, I charge you that they have the equipment and maintain their cause -- either -- already repeated the cause -- the law is that they have got to automatically couple.
>
> I'll deny 3.
>
> Now, let me show you what I've done on yours. I'll deny 1, I'll give 2, I'll deny 3, I'll deny 4, I'll give 5, and I'll deny 6, and I'll deny 7, because I'm giving it in another charge."

The Court denied employer's requested instruction No. 7, which read:

> "7. In considering whether or not the Safety Appliance Act was violated, you are instructed that side play or lateral movement from side to side of couplers and drawheads is necessary in order for cars to round curves and that this side play or lateral movement does not consitute a defect in a coupler unless it is found that the side play or lateral movement is greater than necessary for the safe operation of the cars. (*Atlantic City Railroad Company v. Parker,* 242 U.S. 56, [1916]; *Chesapeake and O. Ry. Co. v. Arrington,* 101 S.E. 415 [Va., 1919])."

Following the conference on the charges the Court was recessed until 9:00 A.M. the following morning. When Court reconvened employer's attorney renewed his objection to requested instruction No. 5 (R-IV-409) contending it was "nothing more than a comment on the evidence, and a rather severe comment on the evidence," that the Court should "just read the statute on the Appliance Act, and let the jury then make its decision" . . . "and I think that in view of the statute which is clear

on its face -- it seems to me that what should be instructed is simply to read the statute, and then let the lawyers make the arguments as to whatever the statute provides, and what the evidence shows as to whether or not there's a violation of the Act." Thereupon, the Court announced "All you got to tell the jury is that if they believe that the car would not couple, then they have violated the Act, and there ain't no fuss and/or buss about it." . . . "Of course, you can comment on that," and "I'm going to deny your requested instruction No. 5, and please note his objection in the record, and in lieu thereof, I'll give requested instruction No. 2, which is the law." (R-IV-412) . . . "the law clearly says that if they have a car that will not couple on impact, it's a violation of the law, and you can comment in your -- in your speech to the jury." . . . "The Court: I know what you want me to say, that it's a violation of the Act. I'll direct a verdict for you if I do that." (R-IV-413)

Petitioner's counsel argued to the jury that if the coupler was so far out of line that it would not couple automatically without adjustment there was a violation of the Act. (R-III-427)

Employer's counsel argued "there was nothing that was inefficient or defective about the coupler." . . . "that couplers must move from side to side," . . . "you can't run a railroad if it don't" . . . "just because one is off to the side, that doesn't mean there's anything wrong with it. You have heard that just because it gets pushed over, that doesn't mean there's anything wrong with it." He further argued that when the law says a coupler must couple automatically it means when they "come together and they lock and nobody has to go in

there and drive a pin in." He further argued that neither the Petitioner nor his witness, Mr. Ryals, could find anything wrong with the coupler, that "just because you have to move one back over to the middle doesn't mean there is something wrong with it." . . . "there's no evidence that this coupler was defective?". And finally "what really was the cause of this accident, if it happened as he says, was that he failed to go and get the help that he was under obligation to do, and he knew he could, and that he had in the past, and that's the cause of the accident." (R-IV-454-456)

The jury retired at 11:00 A.M. and after 15 minutes returned and the foreman stated to the Court that it had a question to ask "we ran into a snag, maybe, to begin with that the -- when you read us the law, which in a sense said that the coupler should couple automatically. We need to know by "automatically -- by what means automatically? Does that mean that the coupler should couple automatically without aid from any human?". The foreman also asked "does it also mean that it must couple automatically without having been touched by any human before?" Answering the questions the Court said: "Listen to the law. I think you will be able to interpret it if you listen to the law." Again the Court read the statute verbatim and returned the jury to its deliberations.

Immediately Petitioner's counsel renewed his request that the Court give his requested instruction No. 5 or a charge that "operating a car on which the drawbar is so far out of line as to prevent automatic coupling violates the act and imposes absolute liability." and the following transpired:

"THE COURT: Well, now, are you saying

that I should have charged them that?

MR. STEWART : I believe that the jury is obviously confused. They didn't get a reply to the question that they asked, and the Courts were a long time arguing what this meant, in that even our Court system in this country had difficulty with the Act until -- until it was interpreted -- interpreted by the appellate courts of the United States, mostly in cases occurring 50 years before now.

THE COURT: You had forty-eight minutes to argue to the jury all of these points that you are now making, and I refused to give that charge. I believe it's your charge No. 4, because I felt that it's too much of a comment on the evidence.

MR. STEWART: Yes. sir. This is a federal case, Your Honor, and there is no prohibition.

THE COURT: I don't care if it's an international case, I still say --

MR. STEWART: I think it's law, Your Honor, for the reason I was -- I argued it, yes, and the jury, obviously, now is wondering whether my argument is valid, or it could just be hot air, because --

THE COURT: That's your interpretation of it, I don't interpret that at all, but your objection is noted in the file.

MR. STEWART: All right, sir." (R-IV-481)

At 2:30 P.M. the jury returned to advise the Court it had reached an "impasse" and asked "if we were to award for the plaintiff, does it make the defendant guilty and in violation of federal law" and the Court inquired:

"THE COURT: You mean from a criminal standpoint? To get them to a criminal prosecution?

Come to the side-bar gentlemen.

Is that what you mean?

MR. HAYES: Yes. sir. I guess I really meant to both. Both for the -- both liable for future -- will it make the railroad liable for future or present liability?

THE COURT: You can't award for the Plaintiff unless the defendant has violated the Safety Appliance Law.

MR. HAYES: That is all we needed to know then.

THE COURT: We are not convicting them." (R-IV-484-485)

The jury again retired and at 3:25 P.M. returned to the courtroom with a verdict for defendant. (R-IV-486)

The portion of the Court's charge given on the Safety Appliance Act appears Appendex B-1-2.

The refusual of the Trial Court to give petitioner's requested instructions Nos. 1, 3 and 5 were designated as judicial acts to be reviewed in the District Court of Appeal (R-I - 31).

REASONS FOR GRANTING THE WRIT

The decision of the District Court of Appeal sustaining the rulings of the trial court deprived petitioner of the protective provisions of his Federally created rights under the Safety Appliance Act, as interpreted in the Federal Courts. *Bailey v. Central Vermont Railway,* 319 US 350 (1943).

A. The decision is in direct conflict with the

decision of the United States Court of Appeals, Tenth Circuit, in *Kansas City Southern Railway Company v. Cagle,* 229 F 2nd (10th Cir. 1955), and is in direct conflict with the decision of the Supreme Court of Utah in *McGowan v. Denver & R. G. W. R. Co.,* 224 P 2nd 628 (1952), certiorari denied, 344 US 918 (1953).

B. The decision is in substantial conflict and inconsistent with the construction of the Act by numerous cases decided by the Supreme Court of the United States including *O'Donnell vs Elgin, Joliet & Eastern Railway Company,* 338 US 384 (1949), *Carter v. Atlanta & St. Andrews Bay Ry. Co.,* 339 US 430 (1949), and *Affolder v. New York, C. & St. L. R. Co.,* 339 US 96 (1950).

C. The District Court of Appeal, First District, State of Florida has decided an important question of Federal law construing and affecting the rights of railroad employees which has not been settled, but should be settled by this Court. *Atlantic City R. R. Co. v. Parker,* 93 A 574, cert. denied, 242 U.S. 56 (1916).

ARGUMENT

In *Cagle*, supra, the Court of Appeals, Tenth Circuit, affirmed a judgment for a railroad employee who suffered an injury in the same way as petitioner in the instant case, saying at 229 F 2nd 14, 15:

> "The one fact upon which appellant was sought to be held liable was that it was operating a car on which the drawbar was so far out of line that it could not be coupled automatically by impact. Appellant states the question in its brief to be, 'Was the one fact

that the coupler was out of line a noncompliance with the Act?' We think the answer to the question must be in the affirmative.

A great number of cases have considered the scope and effect of the Coupler Provision of the Federal Safety Appliance Act. Space prevent even a listing of all the cases which have considered these provisions, let alone an analysis thereof. Without exception they have held that the Act requires that cars be so equipped that they will couple automatically by impact and can be coupled and uncoupled without the necessity of persons going between them. Without exception the cases have held that operating a car on which the drawbar is so far out of line as to prevent automatic coupling violates the Act and imposes absolute liability."

* * *

"The trial court correctly instructed the jury that the only questions of fact were, was the drawbar so far out of alignment as to prevent automatic coupling of the two cars, and were appellant's injuries the proximate result, if the first question was answered in the affirmative?"

In *McGowan,* supra, the Supreme Court of Utah, in affirming a judgment for the employee said at 224 P 2nd 630:

"Plaintiff testified that as the east end of the coal car approached him he noticed that the moving coal car's drawbar was so far out of alignment toward him that without adjustment, it would not couple on impact so he shoved it with his right foot moving it slightly but not

> enough, that he then gave the engineer an unheeded stop signal and shoved the drawbar again still not moving it enough, so he shoved it again this time moving it enough so that it coupled on impact, crushing his toe between the knuckles."

* * *

244 P 2D at 630:

> "Instruction No. 5, states that 'if it was necessary for plantiff to adjust the drawbar or coupling mechanism with his hands or feet' there was a violation of the act."

The Court made an exhaustive review of the law and on the authority of *O'Donnell,* supra, *Carter,* supra, and *Affolder,* supra, at 244 P 2d at 633 held:

> "These cases hold that under the Safety Appliance Act a plaintiff does not have to show a defective or bad condition of the coupler but is entitled to a peremptory instruction that the failure of the coupler to perform properly is a violation of the Act which renders the defendant liable for all injuries proximatley resulting in whole or in part from such failure to perform, which is itself an actionable wrong."

For an excellent discussion of couplers, see n. 2 at 244 P 2d 630.

In *O'Donnell,* supra, the facts were the coupler separated after having been coupled and the car running free was alleged to have collided with other standing cars and drove them against those whose couplers decedent had said he was going to adjust. The Supreme Court at 338 US 389, said:

"We hold that the Safety Appliance Act requires couplers which, after a secure coupling is effected, will remain coupled until set free by some purposeful act of control.

What then should a jury be instructed is the consequence of a failure to provide couplers that so perform? Should the jury be instructed that it must find liability or merely that it may find liability for injuries proximately resulting from the failure?

and at 338 US 390, said:

"But this Court early swept all issues of negligence out of cases under the Safety Appliance Act. For reasons set forth at length in our books, the Court held that a failure of equipment to perform as required by the Safety Appliance Act is in itself an actionable wrong, in no way dependent upon negligence and for the proximate results of which there is liability - a liability that cannot be escaped by proof of care of diligence. (authorites omitted). These rigorous holdings were more recently epitomized by Chief Justice Hughes, speaking for the Court: 'The statutory liability is not based upon the carrier's negligence. The duty imposed is an absolute one and the carrier is not excused by any showing of care however assiduous.'"

and at 338 US 393, said:

"The plaintiff, for example, can add nothing to the liability incurred from a violation of the

> Act by producing evidence of negligence. Here there was affirmative and, so far as we can find, uncontradicted testimony that there was 'a partial fracture on the inside of the coupler,' indicating that the coupler was weakended by an old defect. However important this evidence might have been in determining common law negligence, it added nothing to the direct case under the Safety Appliance Act made by showing the breaking of the coupler.

and at 338 US 934, said:

> "As to the claim based on the Safety Appliance Act, we hold that the plaintiff was entitled to a peremptory instruction that to equip a car with a coupler which broke in the switching operation was a violation of the Act, which rendered defendant liable for injuries proximately resulting therefrom, and that neither evidence of negligence nor of diligence and care were to be considered on the question of this liability."

In *Carter,* supra, the Court said at 338 US 433:

> "Since 1893 the Congress has made it unlawful for a railroad company such as respondent to use any car on its line 'not equipped with couplers coupling automatically by impact.' This Court has repeatedly attempted to make clear that this is an absolute duty not based upon negligence, and that the absence of a 'defect' cannot aid the railroad if the coupler was properly set and failed to couple

> on the occasion in question. (Authorities omitted). The fact that the coupler functioned properly on other occasions is immaterial."

In *Affolder,* supra, the Court again said at 339 US 98:

> " Respondent took the position that the criterion of the Act is, 'were they (the cars) equipped with efficient couplers?' and 'did they (the couplers) in fact fail to couple?'"
>
> * * *
>
> "Nor do we think that any question regarding the normal efficiency of the couplers is involved in an action under the Safety Appliance Acts." ..."the duty under the Acts is not based on the negligence of the carrier but is an absolute one requiring performance 'on the occasion in question.'"

To the same effect see: *Chicago, St. P., M. and O. Ry. Co., v. Muldownwy* 130 F 2nd 971 (8th Cir. 1942), cert. denied, 317 US 700; and *Metcalfe v Atchison, T. and S. F. Ry. Co.,* 491, F 2nd 892 (10th Cir. 1974).

The employer contended that the Supreme Court of the United States in *Parker*, supra, recognized an exception to the requirement that couplers must always couple automatically where the normal operations of the railroad required sideplay. The employer found support for its position in *Arrington*, supra.

Parker only suggests, by way of dictum, that an argument could be made for such defense, but did not declare it to be the law. *Arrington*, supra gave credence to the exception but held the exception did not apply in

the case under consideration.

The prejudice was made patent when the jury returned after fifteen minutes deliberation to state 'we ran into a snag" over the meaning of the word automatically, and asked did the court mean the couplers should couple automatically "without aid from any human?" and "does it also mean that it must couple automatically without having been touched by any human before?" The trial judge in complete abdication of his duty to instruct the jury on the law as interpreted by the Supreme Court of the United States merely reread the statute and said "Listen to the law. I think you will be able to interprete it if you listen to the law."

The jury later returned to inquire whether or not their verdict would find criminality. The Court again declined to give the jurors' a meaningful instruction.

The Court directed counsel to perform the function of educating the jury as to the law as well as convincing the jury as to the facts.

In view of the confusion in the Court below, resulting from the contentions of counsel as to the meaning of *Parker,* supra, this Court should clarify whether or not the failure of a coupler resulting from the normal operations of the railroad creates an exception to the absolute requirements of the Safety Appliance Act. *Tiller v. Atlantic Coast Line R. Co.,* 318 U.S. 54 (1943).

This court in *Bailey,* supra, held that the right to jury trial is "part and parcel" of the remedy afforded by the Federal Employer's Liability Act, which Act is read in pari materia with the Safety Appliance Act. A fair and meaningful trial by jury should include an instruction which informs the jury as to the provisions of the Safety Appliance Act as construed by the Supreme Court of the United States.

CONCLUSION

Under the foregoing authorities injured railroad employees are entitle to juries informed as to the protective provisions of the Safety Appliance Act, and to assure this, the Writ should issue.

Respectfully submitted,

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Petition for a Writ of Certiorari to the United States Supreme Court have been furnished by United States first class mail on this_____day of_____1981, to the following:

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Attorney for Respondent

_____
Attorney

APPENDIX

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE REHEARING PETITION AND
DISPOSITION THEREOF IF FILED.

CASE NO. TT-101

McARTHUR DAVIS,
Appellant,

vs

FLORIDA COAST RAILWAY COMPANY,

Appellee.

Opinion filed December 30, 1980

An Appeal from the Circuit Court for Duval County,
Marion W. Gooding, Judge.

Tom B. Stewart, Jr., Jacksonville
for Appellant.

E. Dale Joyner of Toole, Taylor, Moseley &
Joyner, Jacksonville, for Appellee.

PER CURIAM.

AFFIRMED.

ROBERT SMITH AND THOMPSON, JJ., and
WOODIE A. LILES (Ret.)
Associate Judge, CONCUR.

B-1

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

Case No. 77-5977-CA

Division: D

McARTHUR DAVIS,

Plaintiff,

vs.

FLORIDA EAST COAST RAILWAY COMPANY,
a corporation,

Defendant.

COURT'S CHARGE ON SAFETY APPLIANCE ACT

The plaintiff, McARTHUR DAVIS, is seeking to recover money damages against the FLORIDA EAST COAST RAILWAY COMPANY for an injury he claims he received on August 18, 1976, while working as a switchman in Jacksonville, Florida.

Now, the issue for your determination in whether the defendant violated the standards of the Federal Safety Appliance Act, and, if so, whether such violation was the cause or contributing cause of the injuries the plaintiff claims he sustained.

The plaintiff charges that the defendant thereby was quilty of a violation of the Act of Congress of the United State known as the Federal Safety Appliance Act.

The relevant portion of the Act reads:

"It shall be unlawful for any common carrier engaged in interstate commerce by railroad to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers automatically by impact..."

Defendant railroad admits the alleged railroad car, if involved, was hauled on its line and used in interstate commerce, but denies any violation of the Safety Appliance Act and any injury to plaintiff resulting from any alleged violation of the Act.

Now, a violaton of the Safety Appliance Act is a legal cause of injury if it produced or contributes, in whole or in part, to producing such injury.

If the greater weight of the evidence does not support the plaintiff's claim under the Safety Appliance Act, then he cannot recover against the Railroad under that theory. However, if the greater weight of the evidence shows the Railroad failed to comply with the Safety Applianc Act and that such failure was a legal cause, in whole or in part, of the plaintiff's injuries, then plaintiff is entitled to recover damages against the defendant.